Supreme Court, U. S.
FILED
AUG 18 1979
MICHAEL RODAK, JR., CLERK

78-1940

In the Supreme Court

OF THE

United States

OCTOBER TERM 1978

No. 78-1948

JAMES E. O'CONNOR, et al.,
Appellants,

vs.

SAN FRANCISCO POLICE COMMISSION, et al.,
Appellees.

On Appeal from the California Court of Appeal, First Appellate District

MOTION TO DISMISS OR AFFIRM

GEORGE AGNOST
City Attorney
STEVEN A. DIAZ
Deputy City Attorney
206 City Hall
San Francisco, CA 94102
Telephone: (415) 558-2221
Attorneys for Appellees San Francisco Police Commission, et al.

August 20, 1979

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7882

SUBJECT INDEX

	Page
The City and County Ordinance involved and the nature of the case	1
A. The statute	1
B. The proceedings below	3
Argument	4
The case presents no substantial question not previously decided by this court	4
Conclusion	6

TABLE OF AUTHORITIES CITED

Cases

Bishop v. Wood 426 U.S. 341 (1976)	4
Board of Regents v. Roth 408 U.S. 564 (1972)	4
Home Building & Loan Association v. Blaisdell 290 U.S. 398 (1934)	4
Hurtado v. California 110 U.S. 516 (1884)	5
Luxor Cab Co. v. Cahill, et al. 21 Cal.App.3d 551 (1971)	5
People v. Galena 24 Cal.App.2d 770 (1938)	5
People v. McCloskey 76 Cal.App. 227 (1926)	5
Rosenblatt v. California State Board of Pharmacy 69 Cal.App. 2d 69 (1945)	5
San Diego Building Contractors Association v. City Council of San Diego 13 Cal.3d 205 (1974)	4, 5
Subriar v. City of Bakersfield 59 Cal.App.3d 175 (1976)	5
Teachout v. Bogy 175 Cal. 481 (1917)	5
Veix v. Sixth Ward Building and Loan Association, etc. 310 U.S. 32 (1940)	4, 5

Rules

Rules of the Supreme Court of the United States:	
Rule 16(1)(c)	1
Rule 16(1)(d)	1

Statutes

City and County of San Francisco Proposition K	2, 3

In the Supreme Court

OF THE

United States

OCTOBER TERM 1978

No. 78-1948

JAMES E. O'CONNOR, et al.,
Appellants,

VS.

SAN FRANCISCO POLICE COMMISSION, et al.,
Appellees.

**On Appeal from the California Court of Appeal,
First Appellate District**

MOTION TO DISMISS OR AFFIRM

The appellees, the City and County of San Francisco, California and various of its officers, respectfully move to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the California Court of Appeal, First Appellate District in this case. Rule 16(1)(c) and (d).

THE CITY AND COUNTY ORDINANCE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

This appeal raises the question of the validity of a regulatory licensing system enacted by a vote of the people of the City and County of San Francisco (hereinafter "San Francisco") on June 6, 1978, which is known as Proposition K.

This ordinance repeals the former law regulating certificates of public necessity and convenience (hereinafter "certificates") and the motor vehicle for hire activities they authorized (chiefly taxicab operations). Such certificates had been transferable to others subject to the approval of the San Francisco Police Commission.

Proposition K[1] embodies certain reforms in San Francisco's regulatory scheme governing the operation of motor vehicles for hire pursuant to the City's police powers. These reforms include the setting of standards for continuous operation,[2] measures to regulate record keeping[3] and fare charges[4] and a requirement that only driver-operators may qualify as certificate holders.[5] Certificates issued pursuant to Proposition K are not transferable either expressly or by the operation of law.[6] To effectuate the intended reforms, Proposition K terminated the former regulatory scheme and all outstanding certificates.[7] To mitigate any hardship which might attend the change in the licensing system, a special provision allows those who held certificates under the former ordinance to qualify automatically for certificates under the new system.[8] It is a misdemeanor to operate a motor vehicle for hire in San Francisco without a certificate.

---

[1]See the text of Proposition K which is attached as Appendix "E" to the Jurisdictional Statement of the Appellants herein.

[2]*Ibid.*, Section 4(a).

[3]*Ibid.*, Section 6.

[4]*Ibid.*, Section 7.

[5]*Ibid.*, Section 2(d), subject also to the "grandfather" provisions of Sections 2(f) and 4(b).

[6]*Ibid.*, Sections 4(a), 5 and 1.

[7]*Ibid.*, Sections 8 and 9.

[8]*Ibid.*, Section 4(b).

B. The Proceedings Below

The appellants were all bearers of certificates at the time that Proposition K was adopted. Some of the appellants have paid large sums of money to various private parties for the transfer of these certificates. Some of the appellants paid only a modest application fee to San Francisco for the original issuance of certificates in amounts as small as ten dollars.

Appellants, contending that they had "property" rights in the certificates held by them, filed separate suits in the California Superior Court to have Proposition K declared to be invalid. Appellants, in separate motions in the various Superior Court proceedings, sought preliminary injunctions against the enforcement of Proposition K. These motions were denied. The appellants thereupon filed separate petitions for writs of mandate before the California Court of Appeal, First Appellate District. These petitions were summarily denied. Appellants then separately petitioned for hearings before the California Supreme Court. That court ordered these matters remanded to the Court of Appeal for hearing. There, the actions were consolidated for hearing and the matter was fully briefed and oral argument was heard. The Court of Appeal then denied the petitions of the appellants on the merits. The written opinion of the California Court of Appeal is reported at 90 Cal.App.3d 107 (1979). Appellants thereafter filed petitions for hearing in the California Supreme Court. These petitions were denied and the instant appeal was thereafter timely filed.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

A case presents no substantial federal question when an interest in dispute is one created by state law pursuant to the police power and the statute or ordinance creates neither a "contract" nor a "property interest." *Bishop v. Wood,* 426 U.S. 341 (1976); *San Diego Building Contractors Association v. City Council of San Diego,* 13 Cal.3d 205 (1974), appeal dismissed for want of a substantial federal question at 427 U.S. 901.

In *Bishop, supra,* the Court reviewed a claim involving an alleged property interest in the plaintiff's public employment as a policeman. In referring to the manner of determining the nature of the plaintiff's interest, the Court stated at 426 U.S. 344 that,

> "the sufficiency of the claim of entitlement must be decided by reference to *state* law" (emphasis added).

At this point, the Court referred to a footnote in which, citing *Board of Regents v. Roth,* 408 U.S. 564, 577 (1972), the Court reiterated that,

> "'Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.'"

This Court has repeatedly held that there can be no expectation in the continuance of a statutory regulatory

scheme. *Home Building & Loan Association v. Blaisdell,* 290 U.S. at 439-430 (1934); *Veix v. Sixth Ward Building and Loan Association, etc.,* 310 U.S. 32 (1940); *San Diego Building Contractors Association v. City Council of San Diego,* 13 Cal.3d 205 (1974), appeal denied for want of a substantial federal question at 427 U.S. 901.

The well settled rule of California law is that certificates of public necessity and convenience, and other permits or licenses granted pursuant to the police power do not create vested rights and are not contracts. *Rosenblatt v. California State Board of Pharmacy,* 69 Cal.App.2d 69, 73 (1945); *Teachout v. Bogy,* 175 Cal. 481 (1917); *Luxor Cab Co. v. Cahill, et al.,* 21 Cal.App.3d 551 (1971); *Subriar v. City of Bakersfield,* 59 Cal.App. 175 (1976). See also *Hurtado v. California,* 110 U.S. 516 (1884); *People v. McCloskey,* 76 Cal.App. 227, 230 (1926). This is particularly true where the regulated activity involves the commercial use of the streets. *People v. Galena,* 24 Cal.App.2d 770, 775 (1938); *Subriar, supra; People v. McCloskey, supra; Luxor Cab Co. v. Cahill, supra.*

CONCLUSION

Wherefore, Appellees respectfully submit that the questions upon which this cause depends are so unsubstantial as not to require further argument, and Appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in this cause by the California Court of Appeal, First Appellate District.

Respectfully submitted,

GEORGE AGNOST
City Attorney
STEVEN A. DIAZ
Deputy City Attorney
Attorneys for Appellees
San Francisco Police
Commission, et al.

August 20, 1979